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COMPLETION OF A FRAMEWORK CONVENTION ON CLIMATE CHANGE

Technical review of the revised text under negotiation

Note by the Chairman

1. In conformity with the decision recorded in the report of the Intergovernmental Negotiating Committee on the first part of its fifth session (A/AC.237/18 (Part I), para. 58), the secretariat of the Committee undertook a technical review of the revised text under negotiation.

2. After consultation with the Bureau, the Chairman submits the technical review as a background document for the information of delegations.

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TECHNICAL REVIEW OF THE REVISED TEXT UNDER NEGOTIATION

Report by the Executive Secretary

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Annexes*

I. Consistency of terminology

II. Comparison of principles with relevant elements of the preamble

III. Research, information and education: comparison of relevant general commitments and articles 5, 6 and 7

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* See document A/AC.237/Misc.21/Add.1 (English only).

I. INTRODUCTION

1. The present technical review of the revised text under negotiation has been undertaken by the secretariat of the Intergovernmental Negotiating Committee (INC) in pursuance of the decision of the Committee, on the proposal of the Chairman, at the first part of its fifth session (A/AC.237/18, para. 58). Reference has been made as appropriate to the earlier technical review of the consolidated working document annexed to the report of the Committee on its fourth session (A/AC.237/Misc.18 and Add.1).

2. The text used as a basis for the present review is that contained in annex II of document A/AC.237/18 (Part I), as finally published. References in the review to article headings and other elements of text that are bracketed are not intended to express any opinion on the retention of the texts referred to.

3. The technical review is intended as a background document to be used as a guide by delegates participating in the final stages of drafting the framework convention on climate change.

4. The approach followed continues to be one of highlighting possibilities for improvement in the text and drawing attention to possible problems in its drafting. A number of explicit suggestions are made for dealing with these matters.

5. The INC secretariat has sought and received assistance from the Office of Legal Affairs of the United Nations Secretariat in the preparation of this review; legal advice has been provided by that Office on some of the matters covered.

II. DRAFTING AND ORGANIZATION OF THE FINAL TEXT

A. Preparation of the final text

1. Order and structure

6. The order of the different articles, their titles and the use of subheadings for articulation of the text are all matters on which the Committee will need to agree. In the view of the secretariat, the order and articulation used in the revised text could be retained, subject to decisions on bracketed titles and subtitles. It is presumed that the several indicative (unnumbered) subheadings that appear in articles 5 to 27 and in the annexes will be dropped from the final text.

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B. Clustering of related texts

12. Examination of the revised text leads to the conclusion that there are several closely related clusters of articles and that attention needs to be given to coherence and consistency within each of these clusters, as well as thoughout the text as a whole. Such clusters might also provide a rationale for the division of drafting work. If clusters are used for the purpose of organizing drafting, consideration would have to be given to the order in which they are taken up. There are different ways in which clusters of articles could be delineated; the following is one possible listing, with some explanatory comments as needed.

1. Definitions (article 1)

13. Consideration of "scientific" definitions started at the first part of the fifth session. Comments thereon have been sought from the Intergovernmental Panel on Climate Change (IPCC) through its Secretary, in accordance with the note appended to the list of definitions in the revised text.

14. The character and implementation of the convention would be significantly affected by definitions of the different categories of parties referred to therein. So far, these categories have not been defined, though there would be a place for them in the "second set" of proposed definitions in article 1. Such definitions are not "scientific" and might need to be dealt with separately from those which are.

2. Preamble and Principles (article 2)

15. There is much overlap between the Preamble and the Principles, both in concept and in language. This is largely because of the continuing lack of a final decision by the Committee on the inclusion of an article on Principles. Annex II (see addendum) compares the Principles and the Preamble by juxtaposing each paragraph of the former with related paragraphs of the latter.

3. Objective and Commitments (articles 3 and 4)

16. Although the Objective flows from the preambular considerations and the Principles, it may be best to consider it as an element guiding the Commitments and therefore deal with it in the same cluster. The Commitments themselves are integrated in one article, thus stressing their interrelationships. For the purpose of organizing drafting work it might be useful to subdivide the content of article 4, at least initially.

4. Research, Information and Education (articles 5-7)

17. There is a need to further improve the linkage between this group of articles and subparagraphs (h), (i) and (j) of article 4.1, "General Commitments". One way of achieving this would be as follows:

(a) The content of article 6, "Exchange of Information", which is no longer accompanied by an annex, could be blended with "General Commitment" (i) and the separate article omitted;

(b) The first paragraphs of articles 5 and 7 could be deleted and replaced by chapeau wording such as "In carrying out their commitment under Article 4.1 (h)/(j), the Parties shall:" and the remainder of each article drafted as subparagraphs under the chapeau;

(c) "General Commitments" (h) and (j) could end with words such as "in the manner set out in Article [5][7]".

18. For ease of reference, the texts of "General Commitments" (h), (i) and (j) are juxtaposed with the first paragraphs of articles 5, 6 and 7 in annex III (see addendum).

5. Conference of the Parties, Secretariat and a mechanism for scientific advice (articles 8, 9 and 11)

19. It may be noted in connection with article 11, pertaining to a mechanism for scientific advice, that the Co-Chairmen of Working Group II have written to the Chairman of the Committee requesting an opinion from the Legal Counsel of the Secretariat on the feasibility of giving effect to the proposed alternative C of this article, whereby IPCC would be invited to become part of the structure of the convention upon its entry into force. This request, which emanated from the deliberations of Working Group II, was conveyed by the Chairman to the Executive Secretary, who is expecting a response from the Legal Counsel before the second part of the fifth session.

6. Implementation and reporting (articles 10, 14 and 15)

20. There is an evident relationship between the implementation functions being considered under article 10, the provisions in article 14 relating to reporting by parties on their implementation of the convention and those on "Resolution of Questions" in article 15.

7. Funding mechanisms (articles 12 and 13)

21. Since the proposal on insurance in article 13 pertains to a financial arrangement, it could be considered with article 12.

8. Settlement of Disputes and final clauses (articles 16-27)

22. Article 16, "Settlement of Disputes", is linked to article 15, "Resolution of Questions", and the drafting of the two articles will need to be coordinated.

23. In the final clauses, particular attention needs to be paid to the majority requirements for amendments to the convention and its annexes (articles 17 and 19) and to the entry into force provisions (article 24).

C. Treatment of annexes and of institutional functions and procedures

24. Given the shortage of time remaining to the Committee for completing its work on the Convention, the question arises whether it is possible to dispense with the four annexes currently proposed. One approach would be to consider what material contained in the proposed annexes could be integrated into the main articles and to decide to leave the remaining material for future examination. In the latter case, consideration could be given to arrangements for continuing work on the omitted subjects after the signature of the convention, so that action might be considered by the conference of the parties at its first meeting.

25. Annex I on research and systematic observation and related subjects is presented in two options, each of which contains indicative lists of subjects to be dealt with in future work and concludes with some more operational elements. The listing of areas of work is important to strengthen the scientific basis for future action on climate change; it may not be essential, however, for the listing to be included in the convention at this stage. Work thereon could be continued after the signature of the convention.

26. The concluding elements of annex I that are of an operational nature could be adequately reflected in article 5. Paragraph 3 of the first option for annex I, concerning support for international programmes, could be integrated into paragraph 3 of article 5, which deals with the same subject. Paragraph 4 of the second option, dealing with the particular needs of developing countries with respect to observation and data analysis, research and technological innovation and finance for these purposes, could be integrated into paragraph 2 of article 5, most versions of which deal with the particular concerns and needs of developing countries.

27. Annex II on reporting consists mainly of a list of items that would be included in national reports submitted pursuant to article 14 and of a list of exclusions from such reports on grounds of confidentiality. It may suffice for the present purposes of the convention for article 14 itself to make appropriate reference to the preparation of national reports that would include information on the implementation of all commitments and all other relevant provisions of the convention, as well as on all other actions that are relevant to the achievement of the objective of the convention. The

article could also indicate broad criteria for exclusions from such reports. Work on the format of national reports could be continued after signature, for consideration by the conference of the parties at its first meeting. In particular, it may be considered desirable for national reports to include common elements for the purposes of comparison and aggregation; a description of such elements could be proposed to the conference of the parties.

28. Annex III on arbitration is a description of a relatively standard procedure, related to article 16, "Settlement of Disputes". However, this annex has never been discussed in depth at previous sessions of the Committee. It may, therefore, be sufficient for the convention to indicate in article 16 that the procedure for arbitration should be the subject of an annex to be adopted by the conference of the parties at its first meeting (see Vienna Convention, art. 11, para. 3 (a)).

29. Annex IV on an insurance mechanism contains a detailed proposal for a new financial institution. This has yet to receive the consideration that it would need before agreement could be reached upon it. It might be sufficient at present for article 13 to contain an adequate reference to future action. If appropriate, provision could be made for work on this matter to be continued after signature.

30. An approach similar to that described above could be applied to articles 10, 11 and 12, which deal with three insitutional mechanisms under the conference of the parties, respectively for scientific advice, implementation and finance/technology transfer. In some or all of these cases, consideration could be given to formulating in the convention the decision to establish these mechanisms and a general description of their purposes, leaving the detail of their functioning and procedures to be determined by the conference of the parties. A subsidiary question would be whether to retain separate articles in all three cases or to integrate some of these provisions in the article on the conference of the parties. As in the case of material presently contained in annexes, elaboration of institutional provisions could be continued after signature of the convention, so that proposals might be made to the conference of the parties at its first meeting.

III. TEXTUAL COMMENTS AND SUGGESTIONS ON DRAFT ARTICLES*

General Comments

(a) Various formulations in the Revised Text speak of "objectives". (See e.g. Articles 8.2 (a), (b), (t), 11.1 and 15.3. If the intent is to refer to the Objective in Article 3, this should be made explicit.

(b) It is not always clear from the words "the Parties" whether these refer to all Parties individually or collectively. The same applies, mutatis mutandis, to references to "the developed country Parties" and "the developing country Parties". Where clarity is sought, more precise language could be used, e.g. "each Party", "the Parties individually and collectively".

(c) Different ways of referring to other international bodies are utilized throughout the Revised Text. (See e.g. Articles 5, 8, 9, 10 & 11). They are variously described as "existing", "competent" and/or "appropriate" and referred to as international and/or intergovernmental. Is there a need for consistency in this regard?

Preamble

Para. 2: The second part of the paragraph, starting with "whilst noting", could become a separate preambular paragraph.

Para. 6: Resolution 46/169 of 19 December 1991 could be included in the list of UNGA resolutions on Protection of global climate for present and future generations of mankind.

Para. 10: The drafting of this long and complex text will need to be carefully reviewed after its substance is agreed; its language will need to be harmonized with that of the related commitments.

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* References to lines of text are to the final version of document A/AC.237/18 (Part I), annex II.

Para.11: There is no explicit reference to UNEP.

In line 4, "for" could be replaced by "to" ("contributions ... to").

Para. 12: This text would need to be harmonized with the related commitments.

The second part of the paragraph, starting with "and recognizing", could be made the subject of another preambular paragraph or merged with the end of paragraph 10 or with paragraph 11.

Para. 15: This paragraph could end at "poverty" and the remaining text considered in conjunction with paragraph 16, which also relates to the promotion of economic growth.

Para. 16: This idea might be better constructed in a different order, as follows: "Recognizing that the economic growth and sustainable development of developing countries, which are [essential] [prerequisites] for their participation in international efforts to address climate change, require the improvement of the international economic environment".

Paras. 18 and 19: The language of these two paragraphs should be harmonized with the relevant provisions of Article 4.3 on Special Situations.

Definitions (Art. 1) Use of the word "anthropogenic".

(a) "Anthropogenic" is defined by the Concise Oxford Dictionary as "originated by man". It can be properly applied as an adjective to "emissions" or to "greenhouse gases" as in the proposed definitions thereof. Its usage as a qualifier of "activities" or "activity", as in the alternative definitions of "net emissions", is doubtful. Is it the activities that are originated by man or the effects of those activities? It would be simpler and also accurate in these cases to use the word "human", thus giving "as created or modified by human activities" and "resulting from human activity". This would be in line with the proposed definition of "climate change", which includes the phrase "which is attributed directly or indirectly to human activity".

(b) In the interest of promoting public awareness, it might be best to limit the use of "anthropogenic" in the Convention and to use "human" or "resulting from human activity" or similar formulations, as appropriate (See e.g., Articles 2.3, 3, 4.2.1 (e), and Annex I. 2 (b) (iii)).

"Net emissions" - second proposed definition

Suggested redraft: Replace phrase starting with "taken" by "calculated over a specified area and period of time according to agreed criteria".

"Precursors" of greenhouse gases.

(a) The point made in footnote 1, on the need for an explicit mention of "precursors" when needed, is well taken. It will be necessary to identify those places in the Convention where the expression "greenhouse gases and their precursors" would be appropriate.

(b) Consideration may be given to including a reference to "precursors" in the definition of "reservoir" and in the second option for the definition of "sink".

Comments by IPCC on proposed definitions

- In accordance with Note 2 to Article 1, the Executive Secretary has asked the Secretary of IPCC (by letter of 12 March 1992) to provide the most representative comments possible from IPCC, given that the Panel
itself will not be meeting before the second part of the fifth session of the INC. Advice has been sought on those definitions which call for scientific opinion, namely, all the terms in the "first set" as well as "aerosols" and "global observing network", which are referred to in Note 1.

Principles (Art. 2)

Para. 1: In the last sentence, the imperative "must" could be better rendered by "will have to" or "will need to".

Para. 2: In the sixth line, "man-made" would be superfluous if the proposed definition of "climate change" is retained.

Para. 3: In the first line, "global" is perhaps rendered superfluous by the proposed definition of "climate system".

Para. 4: This language should be harmonized with Article 4.3.

Paras. 6 & 7 are related and could be combined.

Para. 8: The first phrase of the second sentence, starting "By openly demonstrating", could be better conveyed as "In cases where their direct responsibility or negligence can be openly demonstrated".

Objective (Art. 3)

Line 3: The reference to Principles should be considered as subject to footnote 2 appended to the same reference in Article 4.1 (chapeau).

Line 5: "Anthropogenic" is perhaps superfluous. It is difficult to imagine any interference other than human that is susceptible to action by the Parties to the Convention. If, nevertheless, the concept is to be retained, "human" would be a simpler alternative.

Commitments (Art. 4)

Art. 4.1.1. (chapeau)

- This is a case where it might be useful to specify that the Parties commit themselves to act individually and collectively.

- Is this chapeau intended to cover also the commitments in Article 4.2 and 4.3? If so, the language of the chapeau and the structure and numbering of the paragraphs in Article 4 would need to be reviewed.

- If this Article is retained as a distinct section of Article 4 (with or without a title such as "General Commitments"), it will consist of a single paragraph. Consequently, the chapeau will not be numbered and subparagraphs will be referred to as "4.1 (a)", "4.1 (b)", etc. rather than "4.1.1 (a)", "4.1.1 (b)". This would be editorially consistent with, for example, Articles 4.2, 22 and 27.

Art.4.1.1. - A bracketed proviso regarding "[agreed]/[full] incremental costs" occurs in four different sub-paras: (b), (c), (d) and (e). As in the version in subpara. (c), these clauses should refer to the "provision of funding for ... costs", rather than to the "provision of ... costs".

Art. 4.1.1(c) - The term "practices" appears in both the first and third lines.

- Is it intended that footnote 3 will be retained in the Convention?

Art.4.1.1 (c) and (d) - These are complex texts the drafting of which will have to be reviewed after agreement is reached on their substance.

Art. 4.1.1 (e) and (f) - 4.1.1(e) and (f) both deal with adaptation measures and could be combined. Reference to the special situation of countries affected by drought and desertification could be incorporated into subpara.(e) and subpara.(f) deleted.

- If subpara (f) is retained, its drafting could be improved by referring to "countries affected by drought and desertification".

Art. 4.1.1(g) - The division of this subpara into two elements, (i) and (ii), is not in accordance with the other subparas. The two elements could be merged.

Art. 4.1.1(h),(i) & (j) - The last bracketed phrase [in accordance with Article 5], [6] [7] could be redrafted as follows:

In the manner set out in Article [5], [6], [7].
(See Chapter II, para. 16, above).

Art. 4.1.1(j)

What "process" is referred to in the phrase "... encourage the widest participation in the process, including by non-governmental organizations ..."? If this reference is to the process of education, training and public awareness, then it could be made clearer by saying "in this process".

Art. 4.3.1

Paras. (c) and (e) seem very similar in substance and could be combined.

Art. 4.3.4

- The substance of Article 4.3.4 is largely covered by Article 4.3.1 (h), except that the former is not limited to developing countries.

- If Article 4.3.4 is retained, the Articles referred to in line 1 should be made explicit.

Art. 4.3.5

- In line 1: "the acceptance and" could be deleted so as to avoid conveying the impression of a reservation; flexibility in implementation should suffice for the purpose of this paragraph.

- The entire paragraph could read as follows:

"[5.* The Parties recognize that, in the implementation of the commitments in the Convention, a certain degree of flexibility has to be allowed to those Parties with economies that are in transition from a centrally planned system to a market economy, in order to enhance the ability of these Parties to cope with climate change.*]

Education, Training and Public Awareness (Art. 7)

Para. 3 (b): In the Alternative to para. 3(b) (ii), it might be preferable to use "establish and strengthen" rather than "build". In order to be consonant with the chapeau of 3(b), this sub-para. could read:

> "Assisting developing countries, in the long term, to establish and strengthen their own institutions."

Conference of the Parties (Art. 8)

Para. 2 (chapeau), line 3: Insert "shall" between "and" and "make"

Para. 2(a), line 1: Should "obligations" be replaced by "commitments"?

Para. 2(b): This paragraph covers a similar function to that of Article 10, Option 1, para. 2(d). It would be necessary to ensure that these functions are complementary, taking into account that all subsidiary bodies are subordinate to the Conference of the Parties.

Para. 2(b), line 2: Insert "in order" before "to assess...".

Para. 2(c) could be combined with para. 2(n). The new formulation could read as follows:

> "Establish such subsidiary bodies as are deemed necessary for the [implementation] [operation] of the Convention, consider reports submitted by its subsidiary bodies [and perform ...];"

Paras. 2(c), 2 (f) (Alternative) and 2 (g) contain similar language, referring to functions assigned by other Articles. It could be merged as follows:

> "Perform the functions assigned to it under Articles 10, 11, 12, 13 and 15."

Para. 2(i): It would be desirable to qualify "policies, strategies and measures". For example, it might be appropriate to add "national" before "policies" or alternatively, to insert "adopted by Parties" after "measures".

Para. 2(k): This subject is also covered by para. (l).

Para. 2(m): The reference in para. 2(m) to "[on cooperation related to transfer of technology]" should be read in conjunction with para. 2(f) and the language harmonized.

Para. 2(o): This paragraph conflicts with Art. 10, Option 1, para. 6 which allows the [Committee/Council] to adopt its own rules of procedure. In order that subsidiary bodies might operate effectively between sessions of the Conference of the Parties, they might need some leeway for amending their procedures.
Para. 2(o): Rules of procedure are normally adopted by consensus.

Para. 2(s): It might be necessary to specify to whom these "recommendations" would be addressed.

Once the content of the above subparagraphs is determined, their order could be reconsidered.
N.B. The functions in Article 4.2.1 (b), (c), (d) & (e) are not explicitly reflected in the functions enumerated for the Conference of the Parties.

Para. 3: This and other paras. refer to "the first meeting" of the Conference of the Parties. In United Nations usage, the proper term would be "the first session"; "meetings" are components of a session (as in the case of the INC).
Para. 3: Retention of the words "by consensus" would render the identical phrase in para. 2(o) superfluous.

Para. 6, Option 1: The Office of Legal Affairs has advised that in the first two lines of Option 1, the first square bracket needs to be clarified. The phrase now reads "The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State [member or observer of the United Nations or of its specialized agencies]". The word "State" could modify both "member" and "observer". The term "any observer" would embrace not only non-member States maintaining permanent observer missions at Headquarters, but also intergovernmental organizations having received a standing invitation to participate in the sessions and work of the General Assembly as observers and Palestine. The intention must be made clear whether "observer" is limited to "any State observer" or is meant to embrace "any observer". If the latter is the intention, the text should be redrafted as follows:

"as well as any State [member thereof or any observer thereto]".

The second square bracket in the line which begins "and permanent observers to" should be changed to read "or any observer to".

Para. 6: Option 2: This would need to be revised in light of the above advice.

Secretariat (Art. 9)

Para. 2(e): Could be redrafted to read: ..."coordination with the secretariats of other relevant ... bodies"

Para. 2(f): Could be redrafted to read: ..."To perform other secretariat functions specified in this Convention ..."

Para. 3: This paragraph would need to specify the identity of the "ad hoc secretariat". If it is so intended, the reference could be to "the secretariat established by GA resolution 45/212".

[Implementation Committee] [Executive Council] [Functions] (Art. 10)

Option 1

Para. 2(b): What is meant by "prepare .. the deliberations" of the Conference of the Parties?

Para. 2(c): What is meant by "Oversee"?

Para. 2(d), line 1: Perhaps "commitments" is really intended here in place of "obligations" - particularly since the review would be carried out through an evaluation of national reports.

NB. There is a need for complementarity between this function and Article 14 (Reporting).

Para. 2(d)(i), line 3: "Development of national climate change strategies" might become a commitment (see Article 4.1(b)) but does not seem to be a "reporting requirement". This ambiguity could be clarified by replacing "including" (line 3) by "and on".

Para. 2(e): "review process" needs clarification.

Para. 2(f): Normal practice is for a savings clause to be placed at the very end of the subparagraphs. Thus, para. 2(f) should follow 2(g).

Para. 5: This could be redrafted to read more clearly:

> "The [Committee/Council] shall elect from among its members a Chairman, two Vice-Chairmen and a Rapporteur, each to serve for a term of two years, and who may be reelected to serve additional terms."

Alternatively, this matter could be left to the rules of procedure, as is normally the case.

Para. 6: See comment on Article 8, para. 2 (o) above.

Option 2

If this option were chosen, its proper placement in the Convention would need to be considered. Would it stand alone as a separate article or, as it empowers the Conference of the Parties to establish a subsidiary body with certain functions, could this text be subsumed under Article 8?

Para. d(ii) provides for a "body" to determine whether a report "has been submitted, and whether the report is complete." The criteria by which such determination is to be made should either be included in the Convention or adopted by the Parties to the Convention at a later stage.

Para. (g): This para. refers to Article 16 (Settlement of Disputes). However, the said Article, as presently drafted, does not assign any functions to the body responsible for implementation.

Art. 10

There is no provision in any of the options for the [Implementation Committee] [Executive Council] to report on its activities to the Conference of the Parties. Para. 2(c) of Art. 8 states that the Conference of the Parties shall "consider the reports submitted by its subsidiary bodies." Therefore, it is suggested to add a new para. to the option to be chosen, which would read as follows:

> "Report regularly to the Conference of the Parties on all aspects of its work;"

[Advisory Committee On Science] [And Technology] [Climate Protection And Development] (Art.11)

Para. 3, Alternative A: The phrase "[selected by the Conference of the Parties by methods to be decided at its first meeting]" would be improved if "set out in the rules of procedure" were inserted after "methods". This would ensure that future decisions taken under this paragraph would be guided by a standard procedure.

It might be useful for the Conference of the Parties to indicate how it would define the phrase "[, ... in terms most useful to it]".

Should para. 3 Alternative A be retained, it is suggested that para. 2 of Article 11 could serve as a chapeau for the functions enumerated therein. The first para. of Alternative A could be placed at the end of the list of functions.

Alternative C, line 4: Replace "to integrate" by "become part of".

The phrase "the new regime for cooperation in climate change as set forth in" could be omitted.

N.B. As requested by the Co-Chairmen of Working Group II, a legal opinion on the feasibility of Alternative C has been sought from the Legal Counsel of the United Nations.

[Administrative] [Independent Funding] Mechanism for Financial Resources and Technology Transfer] [International Climate Fund] (Art. 12)

Option 1

Alternative A, line 8: The reference to the "Executive Committee" is inconsistent with Article 10 which refers to an "[Executive Council]".

The functions of policy development and monitoring enumerated under this paragraph are similar to those attributed to the Conference of the Parties in para. 2(f) of Article 8.

Para. 2 (a) - (d): These functions are interrelated; the subparas. could be reordered so that subpara. (c) would appear first. Alternatively, subparas. (b), (c) and (d) could be subsumed in (a), which is of a more general nature, and much of the detail therein could be transferred to the financial rules.

Para. 2 (o): The question arises as to whether this function should be part of the financial mechanism (Article 12), the implementation mechanism (Article 10) or, as provided in Article 4.2.1 (d), the Conference of the Parties.

Para. 2(q): Is "flexibility" the appropriate word in relation to intellectual property rights ?

Option 2

Para. 2 (chapeau): Are the rules of procedure referred to those of the GEF or those of the Conference of the Parties?

Footnote 10: The import of this footnote is unclear. It is presumed that it will not be retained in the final text of the Convention.

N.B. It will be recalled that the texts contained in Section IV.2.2., paras. (b) and (c), and Section IV.2.3, para. (b), of the Consolidated Working Document (Annex II to document A/AC.237/15) were referred by the Plenary to Working Group II (see A/AC.237/18 (Part I), para. 11 (c)). These texts concerned, inter alia, the objects of assistance through the financial mechanism and the means of transfer of technology. May it be assumed that the Revised Text reflects considerations given to these texts by Working Group II?

[[Insurance] [Small Island and Low Lying States] (Art. 13)

Option 2

The substance of this paragraph is very similar to the text in Article 4.3.1 (a) & (b).

N.B. If Annex IV is not retained in the framework Convention, references to it will have to be removed from Article 13.

Reporting (Art. 14)

Para. 2: The timing of initial reports by different categories of countries (presently stated as "x", "y" and "z" years after entry into force) needs to be specified.

Para. 3: The phrase "shall be assisted" does not indicate who would provide such assistance.

- What is meant by "implementation" in this context? Is it the implementation of measures proposed in such reports?

- Article 9.2 (d) and Article 10, Option 2, para. (c) provide that assistance to Parties in meeting reporting requirements shall be made at the Parties' request. This qualification is not made in this paragraph.

Para. 8: It is suggested to redraft this para. as follows:

> **"[8.[,Subject to Annex II,] The manner in which reports would be prepared and their content should be determined by the individual Party.]"**

N.B. Careful attention should be paid to harmonization and cross-referencing between Article 10 and this Article.

If Annex II is not retained in the framework Convention, references to it will have to be removed from Article 14.

Resolution of Questions regarding Interpretation and Implementation of the Convention (Art. 15)

Para. 1: The phrase "may notify its concern, through the secretariat to the Conference of Parties" implies that the secretariat would need to transmit this notification to the Conference of the Parties. Provision, therefore, could be made in Article 9 to this effect.

Para. 6, Option 1: Does the phrase "any Party" (line 2/3) refer to "notifying Party" or indeed to "any Party"? If it is the former, then it would be clearer to insert "by the notifying Party" after "submission" (line 1), and replace "any" before "Party" (line 2) by "such". In addition, "questions" (line 2) should be in the singular. Thus redrafted, this para. would read:

> "6. If, after the expiry of ... months following the initial submission by the notifying Party of any question to the secretariat pursuant to paragraph 1 of this Article, such Party continues to have a concern relating to the [interpretation or] implementation by another Party of its obligations under the Convention, it shall be entitled to invoke the dispute settlement procedures, established by Article [16] (Settlement of Disputes) of the Convention."

Para. 6, Option 2: The Office of Legal Affairs has advised that in order to ensure that the parties to the dispute do not invoke both mechanisms concurrently, and thus avoid conflicting jurisdictions in respect of the same dispute and between the same parties, Option 2 should be amended to clarify that although a party is allowed to access either dispute settlement mechanism or both mechanisms sequentially, it is precluded from invoking them concurrently. For example, the text could read:

> "The application of the provisions of this Article are without prejudice to the subsequent application of the provisions of Article [16] (Settlement of Disputes) of the Convention".

Settlement of Disputes (Art. 16)

Para. 2, line 4: Replace "in application" by "or application".

Option 1

Para. 6, line 1: Replace "created" by "established".

Option 2

Para. 5, line 3: After "Tribunal", add "referred to in Article 3(i) of Annex III".

Para. 6, line 5: The phrase "both means" could be made more explicit by the following redraft: "... or if they have accepted both means as set out in para. 2 (a) and (b) of this Article ..."

N.B. If Annex III is not retained in the framework Convention, references to it will have to be removed from Article 16 and some consequential redrafting undertaken with respect to references to the Arbitral Tribunal.

Amendments to the Convention (Art. 17)

Para. 2, last sentence: This could be redrafted as follows:

> "The secretariat shall also communicate proposed amendments to the Signatories to the Convention and to the Depositary, for information".

The Office of Legal Affairs advises that the entry into force of an amendment requires the Parties to deposit instruments of acceptance only. Consequently, paras. 3, 5 and 6 could be redrafted as follows:

Para. 3, last sentence:

"The adopted amendment shall be communicated by the secretariat to the Depositary, who will circulate it to all the Parties for their acceptance."

Para. 5:

"Instruments of acceptance in respect of an amendment shall be deposited with the Depositary. An amendment adopted in accordance with paragraph 3 above, shall, [unless otherwise provided in the amendment itself,] enter into force for those States having accepted it on the ninetieth day after the date of receipt by the Depositary of an instrument of acceptance, by at least..."

Para. 6:

"6. The amendments shall enter into force for any other Party on the ninetieth day after the date on which that Party deposits with the Depositary its instrument of acceptance of the said amendments."

Protocols (Art. 18)

The draft Article on protocols does not specify voting rules for their adoption.

Para. 1, line 3: This is the only reference to "[comprehensive] purposes and principles" established in the Convention. If this is intended to refer to the Objective set forth in Article 3 and the Principles in Article 2, this should be stated explicitly.

Arts. 18 & 19 It would be logical for Article 19 on Annexes to precede Article 18 on Protocols, since annexes are an integral part of a convention and protocols are not.

Adoption and Amendment of Annexes to the Convention (Art. 19)

Para. 2, line 2: Replace "Article [VII.3] by "Article 17".

Para. 3, line 3: Replace "the date on which the Depositary issues notices" by "the date of the communication by the Depositary".

Para. 5, line 2: Replace "amended Annex" by "amendment to an Annex".

N.B. The language of Article 19 will need to be reviewed depending on whether Annexes are to be included in the framework Convention. The present text presupposes their inclusion, and hence refers to "additional" annexes - meaning those not adopted simultaneously with the Convention. If no Annexes were so adopted, references to "additional" annexes would have to be omitted and consequential amendments made.

Depositary (Art. 21)

After the word "Convention", add: "and of Protocols adopted in accordance with Article 18".

Signature (Art. 22)

Line 4: After "and", insert "thereafter"

On the basis of advice from the Office of Legal Affairs, it is proposed that the first part of this paragraph should be redrafted as follows:

> "This Convention shall be open for signature by States that are Members of the United Nations or of any of the specialized agencies or that are Parties to the Statute of the International Court of Justice and by regional economic integration organizations at ...".

Entry into Force (Art. 24)

Para. 1: The Depositary would need guidance on the calculation of "[net] emissions" and of shares thereof in a global total, required by Options 2, 3, & 4.

"[Net] emissions" from a regional economic integration organization would be interpreted to comprise "[net] emissions" from all its member States.

Para. 2, line 5: Replace "it" by "the Convention".

Withdrawal (Art. 26)

Para. 2: In the first line, delete the word "its"; in the second line, after the word "Depositary", insert the words "of the notification of withdrawal"; and, after the word "in", on the second line, add the words "the said notification.".